

COOPERATING AGENCIES

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CEQ REGULATIONS

- 40 CFR 1501.6
- The purpose is to emphasize agency cooperation early in the NEPA process.
- The Lead Agency may request that another Federal Agency be a Cooperating Agency if:
 - The Other Agency has Jurisdiction by law and/or
 - Special Expertise with respect to any environmental issue
- An agency may request the lead agency to designate it a cooperating agency
- Who can be a Cooperating Agency?
 - Other Federal, State, local and Tribal agencies

CEQ REGULATIONS

- **Lead Agency Responsibilities:**
 - Request participation of other Federal Agencies
 - Use the environmental analysis and proposals of Cooperating agencies.
 - Meet with the Cooperating agency at the latter's request
 - Prepare yearly report to CEQ on Cooperating Agency Status for all EISs.

CEQ REGULATIONS

- **Cooperating Agencies Responsibilities:**
 - **Participate in the NEPA process**
 - **Participate in the Scoping process**
 - **Provide comments on documents**
 - **Develop information and environmental analyses**
 - **Make Staff available to support the Lead Agency**
 - **Normally use their own funds for the effort**
 - **Decline Cooperating agency status**
 - **Reportable to CEQ unless they have jurisdiction by law**

NASA NPR 8580.1

- **Section 5.4.1(c)** – Non-exceptional EA
 - Local EMO determines if there is a need for Cooperating Agencies.
- **Section 6.4.2.3:** The Sponsoring Entity is responsible for determining the need for a cooperating agency (s) to participate in an EIS.
 - Or an Exceptional EA?
- **Section 10.4.1(c)** Global Commons: The participation of cooperating agencies will be facilitated by the HQ/EMD in full consultation and coordination with the Office of the General Counsel
- **Section 7.16: ???????**

Questions to Ask*:

- Jurisdiction by Law:
 - Does the agency have the authority to approve, veto, or finance a proposal or a portion of a proposal?
- Special Expertise:
 - Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility?
 - Does the cooperating agency have the related program expertise or experience?
 - Does the cooperating agency have the expertise regarding the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls
- Does the agency understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?
- Can the cooperating agency participate during scoping and/or throughout and meet milestones established for completing the process?

Questions to Ask (cont.):

- Can the cooperating agency, in a timely manner, aid in:
 - identifying significant environmental issues
 - identifying issues previously the subject of environmental review or study?
 - identifying the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls?
- Can the cooperating agency assist in preparing portions of the document and help resolve significant environmental issues to support scheduling and critical milestones?
- Can the cooperating agency provide resources to support scheduling and critical milestones such as personnel; expertise; funding; models and databases; facilities; and equipment and other services?
- Does the agency provide adequate lead-time for review and does the agency provide adequate time for review of documents, issues and analyses?
- Can the cooperating agency accept the lead agency's final decision-making authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action?
 - For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

CEQ Guidance*

- **Disputes**
 - Resolved by agencies
 - Lead Agency has ultimate responsibility for the content of the EIS
 - But is supposed to use analyses and recommendations of cooperating agencies to the maximum extent possible.
- Both have a stake in producing a comment of good quality
- Disagreements about conclusions from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate.
- If each agency has its own "preferred alternative," both can be identified in the EIS
 - Separate RODs

Other Agency Policy

- Some agencies' policy is to decline requests to be an official Cooperating Agency except where the proposed action may directly affect their facilities or the conduct of their work
 - USGS
 - US Army (WSMR)
- Agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to be a Cooperating Agency

Participating Agencies*

- Participating agencies are Federal, State, tribal, regional, and local government agencies that may have an interest in the project may be invited to serve as participating agencies
- All cooperating agencies are participating agencies, by definition....but not all participating agencies are cooperating agencies

Comments Questions Discussion

NEPA TRAINING REQUIREMENTS

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Discussion

- **Include in NPR Update?**
- **Who**
 - NASA NEPA Practitioners
 - NASA Center / Mission Personnel
- **What**
- **When and How Often**
- **How**
 - Online / In Person

